

BEFORE THE FEDERAL ELECTION COMMISSION

ENFORCEMENT PRIORITY SYSTEM
DISMISSAL REPORT

MUR: 7533

Respondents: Unknown Respondent,
Rupert Phillips,
Richard Abraham

Complaint Receipt Date: November 2, 2018

Response Date: May 23, 2019 & June 11, 2019

EPS Rating:

Alleged Statutory

52 U.S.C. § 30120(a)(1), (d)(1)(B)

Regulatory Violations:

11 C.F.R. §§ 100.52(d), 104.2(a)(3)(ii), 100.11(c)(3)

The Complaint alleges that an unknown respondent has created and distributed signs opposing a congressional candidate that failed to contain a disclaimer.¹ Complainant suggests that Rupert Phillips and Rick Abraham may be responsible for the signs, but also states that he does not know who is responsible.² Rupert Phillips asserts that he did not purchase or produce any of the signs.³ Rick Abraham denies that he provided any signs to the business location described in the Complaint.⁴

Based on its experience and expertise, the Commission has established an Enforcement Priority System using formal, pre-determined scoring criteria to allocate agency resources and assess whether particular matters warrant further administrative enforcement proceedings. These criteria include (1) the gravity of the alleged violation, taking into account both the type of activity

¹ Compl. at 1 (November 2, 2018). It appears that the signs used the candidate's last name and added an "N," to make them read "NOjeda." *Id.* Richard Ojeda was a candidate for the United States House of Representatives for West Virginia's Third District, and obtained over 43% of the vote in the general election. See West Virginia Secretary of State, General Election Results, available at <https://results.enr.clarityelections.com/WV/92360/Web02-state.222648/#/>. Based on the photographs supplied by complainant, the signs appear to be less than half a page in size. We are unable to determine the number of signs created and distributed.

² Compl. at 2.

³ Phillips Resp. at 1 (May 29, 2019).

⁴ Abraham Resp. at 1 (June 11, 2019).

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and the amount in violation; (2) the apparent impact the alleged violation may have had on the electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in potential violations and other developments in the law. This matter is rated as low priority for Commission action after application of these pre-established criteria. Given that low rating, the modest amount it appears was spent to create and distribute the signs, and the Enforcement resources that would have to be expended to discover who was responsible for the creation and distribution of the signs, we recommend that the Commission dismiss the Complaint consistent with the Commission's prosecutorial discretion to determine the proper ordering of its priorities and use of agency resources.⁵ We also recommend that the Commission close the file and send the appropriate letters.

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July 19, 2019
Date

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⁵ *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).